IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEALS NO.56 AND 100 OF 1997.

FIRST APPEAL NO. 56 OF 1997.

Anila Rege,
major in age,
r/o F.3-B, PRATIBHA Apartments,
Aquem Alto, Margao, Goa. ... Appellant.

VERSUS

1. Guruprasad M. Rege,
major in age.

2. Sarita R. Rege,
major in age.

3. Yessu V. Rege,
major in age.

4. Kanchan S. Shirodkar,
major in age.

5. Damodar Anant Verenkar,
major in age, all
residing at Deulmol,
Sirvoi, Quepem, Goa. ... Respondents.

Mr. S.D. Lotlikar, Senior Advocate with Ms.S. Dessai, Advocate for the Appellant.

Mr. Sudin Usgaonkar with Ms. R. Kamath, Advocate for the Respondent No.1.

Mr. A.P. Cardozo, Advocate for the Respondent No.5.

FIRST APPEAL NO. 100 OF 1997.

Damodar Anant Verenkar,
major in age,
residing at Quepem, Goa. ... Appellant.

VERSUS

1. Guruprasad M. Rege,
major in age.

2. Sarita R. Rege,
major in age, both

residing at Deulmol,
Sirvoi, Quepem, Goa.

3. Anila Kanta Rege,
major in age,
r/o Aquem Alto,
Margao, Goa.

4. Yessu Venju Rege,
major in age.

5. Kanchan S. Shirodkar,
majore in age,
r/o Deulmol, Sirvoi,
Quepem, Goa. ... Respondents.

Mr. A.P. Cardozo, Advocate for the Appellant.

Mr. Sudin Usgaonkar with Ms. R. Kamat, Advocate for the respondent No.1.

Mr. S.D. Lotlikar, Senior Advocate with Ms. S. Dessai, Advocate for the Respondent No.3.

CORAM: N.A. BRITTO, J.

DATE OF RESERVING THE JUDGMENT: 23.03.2004.
DATE OF PRONOUNCING THE JUDGMENT: 31.03.2004

J U D G M E N T:

These appeals are filed against the Judgment/Award dated 15th February, 1997, of the learned District Judge, Margao.

2. By Notification issued under Section 4(1) of the Land Acquisition Act, 1894 the Government acquired 1335 sq.m. from Survey No.128/1, 28837 sq.m. from Survey No.128/2 and 2075 sq.m. from Survey No.128/3 for setting up of PSC pipe factory at Sirvoi, Quepem. The

above said three survey numbers are contiguous. The dispute between the parties was regarding the receipt of compensation of Rs.6723.93, Rs.1,04,602.61 and Rs.8671.50 awarded by the L.A.O. for the said three plots respectively.

3. The LAO in his Award dated 2.1.87 had observed that plot under Survey No.128/1 (part), 128/2 (part) and 128/3 (part) was shown surveyed in the names of Mohanlal Shivram Rege, Chandras Kanta Rege and Damodar Anant Verenkar respectively and during the inquiry it was revealed that the said Mohanlal expired leaving behind him his widow Smt. Shakuntala Mohanlal Rege and two sons namely Guruprasad Rege and Bharat Mohanlal Rege and that the said Chandras Rege expired leaving behind his widow Smt. Sarita Rege and three sisters namely (i) Smt. Milan Nagesh Nadkarni, (ii) Kanchan S. Shirodkar; and (iii) Anila V. Rege. The L.A.O. further observed that in the course of the inquiry it was submitted that the property which is known as "Podamoll" was originally belonging to Kanta Vencu Ramkrishna Rege and on his death as per the Inventory proceedings, the property was allotted to his widow Smt. Loximibai Sinainim on account of her moiety share and that upon her death the property was inherited by Chandras Rege and now by his widow the said Smt. Sarita Ramcrishna Rege and her

three sisters the said Anila Rege (appellant in F.A. No.56/97), Yessu Venku Rege alias Milan Naguesh Nadkarni and Kanchan Suresh Shirodkar but the claim put forward by the heirs of the said Laximibai was contested by the said Guruprasad Rege son of late Shivram Rege. The L.A.O. observed that according to the said Guruprasad he was the owner of Plot No.128/1 (part) as per the Inventory proceedings and that the said Guruprasad M. Rege did not agree to the boundary line as shown in the survey Plan/report and claimed that the boundary line extended beyond the boundary line of survey No.128/1 into the land under Survey No.128/2 which was not agreeable to the heirs of the said Smt. Laximibai. The L.A.O. further observed that the said Guruprasad Rege was not able to prove the exact area from 128/2 (part) which was belonging to him and that during the course of the inquiry it was informed that the land under survey No.128/3 (part) formed the part of plot under Survey No.128/2 (part) and the said Shri Damodar Anant Verenkar who was shown as owner of plot under survey No.128/3 did not produce any evidence about the ownership of the said plot. The L.A.O. next stated that in view of the above there was a dispute about the ownership as well as the boundaries of the plots under Survey No.128/1, 128/2 and 128/3 and therefore referred the matter under Section 31(2) of the Land Acquisition Act, 1894 for decision of

the learned District Judge for the purpose of apportionment of compensation.

4. I have referred to the above observations only to highlight that the dispute before the Reference Court was not different from the dispute raised by the parties before the Land Acquisition Officer in their evidence.

5. Before the District Court there were four claims filed. The first was of the said Guruprasad Rege. It was his case that the land acquired comprised of property known as "Podamoll" or "Vavalichir" having Land Registration No.17110 bounded on the east by the hill, on the west by Podamoll of Vithol Babli Sinai Rege now Shivram V.C. Rege, on the north by Podamoll of Vishwanath Sinai Godnis and on the south by Podamoll of Ramkrishna Sinai Rege. He further stated that the same property belonged to Shivram Vithal Rege in whose favour it stood inscribed under No. 9.058 and upon the death of Shivram the same property was allotted to him in respective Inventory proceedings under Item No.5, by Order dated 18.6.1974. The said Guruprasad stated that the said property was wrongly surveyed and that it corresponded to the northern half portion of the plot surveyed under No.128/1, 2 and 3 of Sirvoi village and the southern half portion of the area comprising the

above plots belonged to Sarita Rege and her family members and the northern portion continued to be enjoyed and possessed by the said Guruprasad and prior to him by his ancestors for over 50 years and therefore they acquired the same by way of prescriptive title which the said Guruprasad invoked for all legal purposes. The said Guruprasad Rege further stated that he and his family were doing all the agricultural works and plucking the fruits of the trees existing therein without any obstruction. The said Guruprasad further stated that the claim of Damodar Verenkar in respect of Plot No.128/3 was totally wrong and misconceived because his property was situated beyond the plots No.128/1, 2 and 3 towards the western side of the road which is the western boundary of the property "Podamoll" of the respondent Sarita REge and others. The said Guruprasad Rege further stated that the survey regarding Plots No.128/1, 2 and 3 was not properly done and the areas corresponding to the same plots form part and parcel of two properties, one belonging to him, corresponding to the northern half and the other belonging to the said Sarita Rege and other members of her family, corresponding to the southern half of that area and secondly the compensation as far as Plots No.128/1, 2 and 3 is concerned, the same is to be awarded half to him (Guruprasad) and the other half to the said Sarita

Rege and her family members.

6. The second claim was of Sarita Rege. It is her case that the land acquired comprised of the property known as "Podamoll" having Land Revenue No.364 bounded on the east by top of the hill Chirecond of the Communidade, on west by the public road, on north by Podamoll of Shivram Rege and on the south by the road and the same property belonged to Vencu Ramcrisna Rege upon whose death it was allotted to his widow Loximibai by Order dated 14.12.51 under Item No.14 and the said Loximibai died subsequently leaving behind her son Ramcrishna alias Chandras and daughters Milan, Kanchan and Anila. The said Sarita Rege stated she, Milan, Kanchan and Anila got equal rights to the said property and respective compensation. She stated that the property Podamoll comprises of three plots surveyed under Nos.128/1, 2, and 3 of Sirvoi village and that the claim of Damodar Anant Verencar in respect of Survey No.128/3 was totally wrong and misconceived since his property was situated on the other side of the road, towards the western boundary of the property "Podamoll". She stated that the survey in the locality was not rigorously done and therefore survey No.128/1, 2 and 3 do not depict the real position and the areas of the respective properties. She stated that the area

corresponding to the said three plots formed part and parcel of two properties, northern portion (half) belonging to the interested party Guruprasad Rege and its southern half to herself and the said Milan, Kanchan and Anila. She stated that the said Sarita, Milan, Kanchan and Anila have always enjoyed and possessed the southern half above identified, till the southern side boundary road by themselves and through their ancestors peacefully and openly and continuously for over 50 years so that if not otherwise they would have acquired it by prescriptive title which the said Sarita invoked.

7. The third claim was that of the said Milan, Kanchan and Anila (original respondent nos.2, 3 and 4 and appellant in First Appeal No.56/97). It is their case that the Government has acquired part of land surveyed under No.128/2 for the purpose of construction of Government buildings and that this portion is jointly inherited by them and the said Sarita Rege who is the widow of their brother and therefore the compensation awarded by the L.A.O. is to be apportioned between them and the said Sarita Rege in equal shares. They stated that the said land S.No.128/2 absolutely belongs to them and the said Sarita Rege and no other persons have a right to the same. They also pleaded that the said Guruprasad has no right or interest in the land surveyed

under No.128/2 and the entire compensation be paid to the respondent Nos.1 to 4. They stated that the land acquired under Survey No.128/3 does not belong to them and it is absolutely belonging to Damodar Verencar (Respondent No.5) and they have no objection in case the compensation is ordered to be paid to him.

8. The fourth claim is of the said Damodar A. Verenkar (Respondent No.5). It was his case that he is the owner in possession of the property known as "Podamoll" having Land Registration No.5378 and Matriz No.1050 and surveyed under No.128/3. He stated that his property was bounded towards the east by the summit of hillock, on the west by a hedge of property owned by Xencor Bissol Xete and his brother Naraina Bissol Xete, on the north by public road and on the south by the property known as "Andoldega" of Joaquim Bernado Catao da Costa and river. He stated that he is exclusive owner in possession of the said land under Survey No.128/3 and his name is included in Form No.III of the Land Index and there is no dispute regarding the same. He stated that the property "Podamoll" was purchased by him by Sale Deed dated 16.3.1970 and he is the sole owner of the land and the amount of compensation be paid to him.

9. The said Guruprasad (Respondent No.1) examined four witnesses in support of his case including himself (AW.1) and Laxman Shirvoikar (AW.2) Gajanan Shirvoikar(AW.3) and Zikriya Khan (AW.4). The said Sarita (Respondent No.2) examined her attorney Shrikant Naik (RW.1), Nicky Coutinho (RW.2) and Gajanan V. Naik (RW.3). The said Yessu (Respondent No.4) examined her husband and attorney (RW.4) and Shantabai Naik (RW.5) and Vaikunt Kamat (R.W.6).

10. The said Damodar A. Verenkar (appellant in F.A. No.100/97/respondent No.5) examined himself (RW.7).

11. The learned District Judge held that Guruprasad (Respondent No.1.) had established his right to the northern half of the plots surveyed under Nos.128/1, 2 and 3 of Sirvoi village while the respondent nos.1 to 4 (Sarita, Anila, Yessu and Kanchan) had equal right to the southern half of those three plots while the respondent No.5 Damodar A. Verencar had no right over the plot bearing survey No.128/3 and therefore Guruprasad (Respondent No.1) was entitled to half of the amount of compensation and respondent Nos.1 to 4 (Sarita, Anila, Yessu and Kanchan) were entitled to the remaining half of the compensation awarded. -- 11 --

12. At the time of arguments, learned Advocate Shri Lotlikar on behalf of the appellant/Anila Rege has conceded that Guruprasad Rege (Respondent No.1) is entitled to receive the entire compensation in respect of the acquired area from survey No.128/1. Learned Advocate Shri Sudin Usgaonkar as well as learned Advocate Shri A.P. Cardozo do not contest this position. Admittedly the Survey No.128/1 is recorded in the name of the father of the said Guruprasad (Respondent No.1) and he has produced the document of his title at Exh.P-1 and has further stated that the same bears Matriz No.356 and 363. He has also stated that the acquired portion is from Matriz No.363. He has also stated that the entire survey No.128/1 belongs to him and this position has not been contested by the other parties to the reference. In view of the above and in the light of the concession made on behalf of the other parties to the reference, the entire compensation of Rs.6723.93 payable on account of acquisition of part of S. no.128/1 with accrued interest has got to be paid to the said Guruprasad (Respondent No.1). To that extent the Award of the learned District Judge requires to be modified.

13. I will deal next with the claim of Damodar A. Verencar (appellant/respondent No.5) in respect of

survey No.128/3. It is the submission of learned Advocate Shri Cardozo that survey No.128/3 stands recorded in the name of the said Damodar A. Verencar though the said Guruprasad says that it belongs to Sarita (Respondent No.2) while Anila (Respondent No.3) says that it does not belong to their family. Learned Advocate Shri Cardozo further submits that the claim of Guruprasad is dishonest because in one breath he has admitted that he has no right to survey No.128/3, but in written arguments filed on his behalf, the said Guruprasad is still claiming a right to survey No.128/3. It is the submission of learned Advocate Shri Cardozo that the presumption available to Damodar A. Verencar by virtue of his name being recorded initially in form No.III and now in Form I and XIV, has not been rebutted and therefore the entire compensation on account of the said southern portion of Survey No.128/3 ought to be paid to the said Damodar A. Verencar.

14. I am unable to accept the said submission of learned Advocate Shri A.P. Cardozo. The said Damodar A. Verenkar has examined himself and has produced the Sale Deed of the property purchased by him at Exh.RW.7/A. The learned District Judge has come to the conclusion that the said Damodar (appellant/respondent No.5) does not get any ownership right on the ground

that the property stands surveyed in his name and it is rightly so. The said Damodar, as can be seen from his evidence, does not appear to be conversant with his claim and for that reason it appears that he brought certain details written down on the palm of his hand which fact was noticed by the learned District Judge. He has admitted that all the survey numbers of the property which belonged to him and which were presumably purchased by Deed dated 16.3.1970 (Exh.RW.7/A) are on one side of the road and therefore it is obvious that survey No.128/3 which is situated on the other side of the road cannot belong to the said Damodar. The said Guruprasad subsequently has confirmed that he has no right in the portion of survey No.128/3 and in my opinion it is his statement made on oath which has got to be accepted in preference to what has been stated on his behalf by his Advocate in his written submissions. Although initially the said Anila Rege and her two sisters supported the claim of the said Damodar Verencar, the said Yessu through RW.4 Vishnu Nadkarni has not supported the same, for he has stated that he does not know whether the property of the said Damodar is either on the western or the eastern side. Again he has stated that in between Survey No.128/2 and the property of the said Damodar there is a road going towards Bomlamoll. This shows that the property of the

said Damodar is located on the western of the said road shown in the plan Exh.P-5 Colly. AW.4 Zikriya has also stated that the southern half of survey No.128/2 and the whole of survey No.128/3 were being possessed by the deceased Chandras Rege and that next to survey No.128/3 there is a road and next to the said road is the property of the said Damodar Verenkar. AW.1 Guruprasad too has confirmed that survey No.128/3 does not belong to him but belongs to the said Sarita. A.W.2 Nicky also confirms that the property of Sarita is surveyed under No.128/3. RW.1 has also stated that survey No.128/3 entirely belongs to the representatives of Laximibai namely Sarita, Kanchan,Yessu and Anila. In my opinion on the failure of the said Damodar to identify survey No.128/3 as part of the property purchased by him by Deed dated 16.3.70 and in the light of overwhelming evidence that the land comprising of survey No.128/3 belongs to the family of the said Sarita, Anila, Yessu and Kanchan the compensation of Rs.8671.50 has got to be paid to them in equal amount with accrued interest. In this view of the matter the First Appeal No.100/97 is bound to fail.

15. Regarding Survey No.128/2 learned Senior Advocate Shri Lotlikar on behalf of the appellant/Respondent No.3 Anila, has submitted that the

survey records in respect of the same have been duly promulgated which survey was prepared based on de facto possession and therefore compensation ought to be paid to the family of the said Sarita, Anila, Yessu and Kanchan. Shri Lotlikar has next submitted that the said Guruprasad has not disputed the said survey till date and the burden would be on the person who disputes the survey to prove that the same is not correct. Shri Lotlikar has further submitted that there has been collusion between Guruprasad and Sarita and that only for convenience Guruprasad has been claiming half of the portion of survey No.128/2 without specifying what is the area which is acquired therefrom and for how much of that area he is claiming compensation. Referring to the said Sarita, Shri Lotlikar has submitted that she has not stepped into the witness box but has deposed through her attorney who is not a co-owner of the disputed portion, while the attorney of the said Yessu is a co-owner of the disputed portion. It is also his submission that the said Sarita has not made any application for correction of survey records nor has the said Guruprasad nor the said Sarita produced any plan identifying the portions claimed by them. Shri Lotlikar submits that considering the totality of circumstances of the case, the entire compensation as regards Survey No.128/2 be paid to the said Sarita, Anila, Yessu and

Kanchan in equal shares.

16. On the other hand, learned Advocate Shri Usgaonkar has submitted that except for the claim of the said Sarita, the claim of the said Anila, Yessu and Kanchan is a dishonest claim. Shri Usgaonkar has submitted that the half portion of the property of Guruprasad could not be restricted only to survey No.128/1 and that the portions of the said Guruprasad as well as the said Sarita have been identified by all witnesses with reference to ridge/mer. It is further his submission that when both Guruprasad and Sarita referred to half of the property, what they had in their mind was the entire property which was surveyed under Nos.128/1, 128/2 and 128/3. Shri Usgaonkar has submitted that AW.4 is their best witness who has supported their case. Learned Advocate Shri Usgaonkar has placed reliance on the case of **Ram Sarup Gupta (dead) by L.Rs. v. Bishun Narain Inter College and others,** reported in A.I.R. 1987 S.C. 1242.

17. In the above case it has been observed by the Hon'ble Supreme Court that it is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel

beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered.

18. It does not require much effort to conclude that what the said Guruprasad and the said Sarita wanted to convey through their respective pleadings is that the northern half portion of the three plots combined namely survey Nos.128/1, 2 and 3 belonged to the said Gururprasad Rege and the southern half belonged to Sarita Rege and her family including the said Anila, Yessu and Kanchan. Both the said parties have tried to

get the said portion identified by deposing through themselves and their witnesses regarding the existence of a "mer" being the dividing line between the two portions. Similarly, the said Yessu, through her attorney, has also referred to a "mer" which according to them divides the portion of survey No.128/1 of the said Guruprasad from the portion of survey No.128/2 belonging to the said Sarita, Yessu and two others. However, the fact remains that the existence of a "mer" was not pleaded by both the set of parties in their respective written statements. If the said Sarita supported the case of Guruprasad, and one may say against her interest, the said Milan and her two sisters supported the case of the said Damodar against their own interest and the said Damodar has failed in his claim. It is to be noted that the said Sarita is the daughter-in-law of the family of Laximibhai, being the widow of Chandrash Rege, while the said Anila, Kanchan and Yessu are the daughters, and according to RW.5 Shantabai, who has been examined on behalf of the said Anila, Yessu and Kanchan, it is the said Sarita who is in physical enjoyment of the property after the death of her husband Chandrash. It is also an admitted position, as stated by RW1, Shrikant, that the daughters Anila, Yessu and Kanchan after their marriage, reside elsewhere alongwith their husbands and therefore it is safe to

infer that the said Sarita who will know better as to the extent of the property of S.No.128/2 she is enjoying. Lot of criticism has been levelled by learned Senior Advocate Shri Lotlikar regarding the evidence of the witnesses examined on behalf of the said Gururprasad as well as the said Sarita but the fact remains that RW.4 Vishnu, who is the attorney of Yessu, has not been able to support the case pleaded by his wife Yessu and her two sisters. Contrary to what their witness RW.5 Shantabai has stated, he has stated that the property is being looked after by them and in fact, he has stated that he does not know at all if survey Nos.128/1, 2 and 3 belong to Gururprasad and others or to respondents No.1 to 4 (Sarita, Anila, Yessu and Kanchan). Likewise he himself does not know whether half of S.nos.128/1, 2 and 3 belong to Gururprasad and others. The evidence of RW.5 Shantabai cannot make any difference to a case which RW.4 Vishnu, himself does not know. Although some of the witnesses examined on behalf of the said Gururprasad and the said Sarita could be said to have been tutored the fact remains that all of them have referred to the said ridge/mer as a dividing line demarcating the portion of Guruprasad towards the north and of Sarita Rege and Anila and two others towards the south. Whether the said witnesses have referred to the said ridge/mer in the examination-in-chief or

cross-examination, as contended on behalf of Anila Rege and two others would make hardly any difference. AW.2 Laximan is not only related to Guruprasad, but appears to be a tutored witness. AW.3 Gajanan is confused and has stated that Guruprasad is the owner of the northern half of survey No.128/1 which otherwise is not the case of anyone. It appears that he has stated facts because Guruprasad told him to do so. However, AW.4 Zikriya whose evidence otherwise could not be assailed has categorically stated that she knows the land of Guruprasad which is surveyed under No.128/1 and under Survey No.128/2 and she has clarified the position by stating that the northern half of S.No.128/2 belongs to Guruprasad and the southern half belongs to Sarita. She has stated that the dividing line between both is a ridge/mer running from east to west separating survey No.128/2 in northern and southern parts. She has again confirmed that the property of Guruprasad consists of whole of 128/1 and northern half of 128/2 and that the same was initially possessed by the father of Guruprasad and after his death by his son the said Guruprasad. RW.1 Shrikant, the attorney of the said Sarita has confirmed the case pleaded by him. RW.2 Nicky Coutinho who is a common witness of the said Guruprasad and the said Sarita has also stated that half of 128/2 is part of Sarita's property and Sarita's property is also

surveyed under No.128/3. He has further stated that the property of Guruprasad is surveyed under No.128/1 and the remaining half is in survey No.128/2 and there exists a ridge of earth separating the property of Sarita from the property of Guruprasad. In cross-examination he stated that if he stated that the suit property belongs to Sarita, it was because he always saw till his death Sarita's husband enjoying the same. RW.2 Gajanan has stated there is a ridge/mer made of earth which separate Guruprasad's property from the property of Sarita and her sisters. As already stated Guruprasad and the said Sarita are in physical possession of the portions claimed by them and it is they who would be in a better position to know where their respective property starts and ends and the same they have described in relation to the ridge/mer. It is true that neither Guruprasad nor Sarita have specifically stated what is the area from survey No.128/2 which is in their respective possession or what area has been acquired from their respective possession in relation to survey No.128/2. But since the said Sarita who is in actual physical possession and enjoyment of part of Survey No.128/2 states that a part of it belongs to the said Guruprasad and therefore they should pay the compensation in equal shares and her version is well-corroborated, there is no other option

before the Court then to accede to their common stand and order the payment of compensation as claimed by them. In the light of evidence led by both the said parties, namely Guruprasad and Sarita, no payment can be ordered to be made based on survey records of S.No.128/2. In other words the compensation of Rs.104602.61 due and payable with accrued interest shall be paid in halves i.e. half to the said Guruprasad and the remaining half equally to Sarita, Anila, Yessu and Kanchan. Here also the judgment and decree will require to be modified to the extent indicated above.

19. In view of the above discussion First Appeal No.56/97 as well as First Appeal No. 100/97 deserve to be dismissed with costs. Consequently the sum of Rs.6723.93 with accrued interest shall be paid to Guruprasad Rege, the sum of Rs.104602.61 with accrued interest shall be paid half to Guruprasad and the remaining half in equal shares to Sarita, Anila, Yessu and Kanchan Rege. Likewise the sum of Rs.8671.50 with accrued interest shall be paid to Sarita, Anila, Yessu and Kanchan in equal shares. The Judgment/Award of the learned District Judge shall stand modified to the extent indicated hereinabove.

sl. **N.A. BRITTO, J.**